Supreme Court, U.S.
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NO. 93-112

In the Supreme Court of the United States

OCTOBER TERM, 1993

RUSSELL PRITCHARD, JR., ET UX
Petitioners,

v.

MELVIN GOODIE, ET AL
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Did the Court of Appeal err in affirming the Trial Judge's factual finding that the actions of Officer Melvin Goodie when he beat Russell Pritchard, although he was off duty, did not constitute conduct "under color of state law" as required by 42 U.S.C. Section 1983?

LIST OF ALL PARTIES

1. **RUSSELL PRITCHARD, JR.**, petitioner

2. **DEBORAH PRITCHARD**, petitioner

3. **CITY OF BREAUX BRIDGE**, respondent

4. **CHIEF GEORGE MENARD**, Chief of Police for the City of Breaux Bridge, respondent

5. **OFFICER HOWARD DEVILLIER**, respondent

6. **OFFICER DAVE CLARK**, respondent

7. **ESTATE OF MELVIN GOODIE**, respondent

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STATEMENT OF THE CASE

A. Statement of Facts

Unless otherwise indicated during the course of this brief, the term "defendants" shall refer exclusively to: City of Breaux Bridge; Chief George Menard; Officer Howard Devillier; and, Officer Dave Clark. The remaining defendant named in the original complaint filed in these proceedings, Melvin Goodie, is unrepresented.[1] The term "plaintiff" or "complainant" shall refer only to Russell Pritchard, even though the plaintiffs in the lower courts were both Pritchard and his wife. The defendants are the respondents before this Honorable Court, while the plaintiff and his wife, Deborah Pritchard, are the petitioners in the writ application before this Honorable Court.

The facts surrounding this action, as established at trial, do not appear to be significantly disputed. However, the plaintiff's characterization of the factual perimeters of this case, as well as inferences drawn therefrom, all as reflected in his writ application, is somewhat inaccurate and omits several matters of import. Accordingly, the following recapitulation and embellishment of the evidence adduced at trial, and left undisturbed by the United States Court of Appeals for the Fifth Circuit, are submitted for the Court's edification:

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[1] Melvin Goodie died prior to trial and, therefore, his estate was substituted as a defendant pursuant to Rule 25 of the Federal Rules of Civil Procedure. R. 143, Vol. 1; Tr. 3, Vol. 7. His estate was not represented at trial, nor has any appearance been effected on the estate's behalf in any proceedings in the courts below.

1. The date of the occurrence between Goodie and Pritchard was on the evening of September 17, 1987. Tr. 190, Vol. 6.

2. A driving incident on Rees Street in Breaux Bridge, Louisiana, resulted in plaintiff calling Melvin Goodie a "stupid nigger", Tr. 192, Vol. 6; Tr. 43-44, Vol. 7; Tr. 53-54, Vol. 6.

3. Goodie pursued the complainant in his vehicle from the City of Breaux Bridge to the Ruth Bridge located approximately 4 miles outside the city limits. During that pursuit, Pritchard was aware that he was being followed by Goodie as a consequence of his inflammatory and defamatory remarks. Tr. 42-43, Vol. 7; Tr. 55-58, Vol. 7.

4. The only physical confrontation between Goodie and Pritchard occurred at the Ruth Bridge located outside the jurisdictional limits of the Breaux Bridge Police Department. Tr. 80, Vol. 7.

5. On the night in question, Melvin Goodie was off duty, was dressed in plain clothes, was operating a private vehicle, and displayed no indicia of being an officer of the law. Moreover, Goodie never identified himself to Pritchard as a policeman. Tr. 72-77, Vol. 7; Tr. 191-192, Vol. 6; Tr. 46, Vol. 6.

6. Pritchard stopped at the Ruth Canal Bridge, a one lane structure, in order to permit oncoming traffic to clear. He did not stop in response to anything Melvin Goodie did during the aforementioned pursuit. Tr. 200, Vol. 6.

7. After the altercation at the Ruth Canal Bridge, Pritchard followed the Goodie vehicle to record his license tag number. He then went to the Breaux Bridge Police Station to report the incident, having no idea that Goodie was an off duty police officer. Tr. 72, 209-210, Vol. 7.

8. After their arrival at the Breaux Bridge Police Station, which was coincidental only, Goodie performed absolutely no function of a police officer, nor displayed any authority of an officer of the law. Tr. 72-77, Vol. 7; Tr. 105-106, Vol. 6; Tr. 108-109, Vol. 6; Tr. 113, Vol. 6.

9. Officer Howard Devillier was summoned, at the request of Goodie, to address the situation which had arisen as a consequence of the confrontation at the Ruth Bridge between Goodie and Pritchard. Tr. 168, Vol. 6.

10. The investigation of this incident, formal arrest, booking and bonding of the plaintiff, as well as the reports prepared as a result thereof, were the product of the efforts of Officer Howard Devillier.[2] Melvin Goodie played no role what-

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[2] The booking sheets, reports and other documents normally required as a consequence of an arrest by a Breaux Bridge Police Officer *were completed by Officer Devillier.* These documents were: Waiver of Rights Form (Exhibit P-11; Tr. 101, Vol. 6; Tr. 104-105, Vol. 6); the booking sheet (Exhibit P-12; Tr. 43, Vol. 6; Tr. 104-106, Vol. 6); and, the arrest report (Exhibit P-22; Tr. 47, Vol. 6; Tr. 104-106, Vol. 6). The appearance bond (Exhibit P-30) was prepared by Officer Dave Clark who was the dispatcher on the night of the incident. Tr. 175-176, Vol. 6. After an arrest, it is customary for the dispatcher to complete the appearance bond, as opposed to the investigating officer. Tr. 175-176, Vol.6.

soever in any of the foregoing except to relate to Devillier his version of the incident, just as Pritchard did, and just as any other ordinary citizen would have been expected to do under the circumstances. Tr. 43, Vol. 6; Tr. 47, Vol. 6; Tr. 51, Vol. 6; Tr. 104-106, Vol. 6; Tr. 118, Vol. 6.

It should also be noted that the Breaux Bridge Police Department is a rural police agency consisting of an elected Chief of Police and 16 police officers, inclusive of dispatchers and patrolmen. Tr. 38, Vol. 4. George Menard is the elected Chief of Police of Breaux Bridge, having served in that position continuously since 1965. Tr. 8, Vol. 4. On September 17, 1987, Howard Devillier, Dave Clark and Melvin Goodie were commissioned police officers with the Breaux Bridge Police Department and had been employed as such since 1986, 1983 and 1985, respectively. Tr. 29, Vol. 6; Tr. 166, Vol. 6; Exhibit P-8, p. 6. Their duties were those of patrolmen, except that Officer Dave Clark frequently worked as a dispatcher as well. Tr. 29, Vol. 6; Tr. 166, Vol. 6; Exhibit P-8, p. 6; Tr. 167, Vol. 6.

B. Course of Proceedings and Disposition in Lower Courts

On September 14, 1988, Russell Pritchard, Jr. and Deborah Pritchard filed suit against defendants, Melvin Goodie, Chief George Menard, the City of Breaux Bridge, Officer Howard Devillier and Officer Dave Clark. The plaintiffs alleged a violation of their civil rights under 42 U.S.C. §§1983, 1985, 1986 and 1988, as well as the First, Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction of the court of first instance was premised upon 28 U.S.C. §§1331 and 1343.

The case was tried, without a jury, before the Honorable Richard Haik on December 16, 1991, and December 17, 1991, and was thereafter continued to January 27, 1992, and January 28, 1992. The action was taken under advisement by Judge Haik and Reasons for Judgment were rendered on March 4, 1992, dismissing plaintiffs' claims against all defendants, except the Estate of Melvin Goodie, which was found liable under pendent state law claims. R. 328, Vol. 3; see Appendix 3, pp. 22-28 of Appendix to petitioners' writ application. A judgment was signed by the trial court on March 27, 1992, in accordance with the previously entered Reasons for Judgment. R. 363, Vol. 3; see Appendix 2, pp. 19-21 of petitioners' writ application. Plaintiffs appealed the trial court's decision on April 9, 1992. R. 365, Vol. 3. The decision of the trial court was subsequently affirmed by the United States Court of Appeals for the Fifth Circuit on March 25, 1993. See Appendix 1, pp. 17-18 of Appendix to Petition for Writ of Certiorari filed by Russell Pritchard, Jr.

SUMMARY OF ARGUMENT

During the course of this litigation, defendants have steadfastly maintained that the actions of Melvin Goodie adopted on September 17, 1987, were those of a private citizen and not under "color of law", a position which was embraced with unanimity by the courts below. The acts of police officers in the ambit of their personal, private pursuits do not fall within 42 U.S.C. §§1983, et seq. *Stengel v. Belcher,* 522 F.2d 438 (6th Cir. 1975); *Delcambre v. Delcambre,* 635 F.2d 407 (5th Cir. 1981). The jurisprudence of this country has further held that to determine whether an officer is acting under "color of law", one must

necessarily analyze the *nature of the act performed* and the reasons therefor. *Stengel v. Belcher,* supra.

The plaintiff has admitted that Melvin Goodie never adopted any act to indicate, or even intimate, that he was a peace officer. On the night of the incident, Goodie was dressed in plain clothes, was off duty, was driving a private automobile, and had no weapons or badge on his person. As a matter of fact, the complainant did not even learn that Goodie was a police officer until approximately five (5) minutes after he arrived at the Breaux Bridge Police Station when he was so informed by Officer Howard Devillier. The confrontation between plaintiff and Goodie was precipitated by Pritchard calling Goodie a "stupid nigger" while both were in the course of personal, private pursuits.

Additionally, when Goodie and the complainant confronted each other at the police station, the situation was addressed by Officer Howard Devillier who was summoned to handle this matter *at the request of Goodie.* As both Pritchard and Goodie have admitted, the latter played no role whatsoever in the investigation of this incident and/or the interrogation and booking of the plaintiff, except to relay information to Officer Devillier regarding what had transpired between him and Pritchard. All traditional police duties were discharged by officer Devillier, solely and exclusively. This is undisputed.

Both of the courts below closely analyzed the evidence of record and determined, without dissent, that the facts adduced at the trial of this case disclosed that on the evening of September 17, 1987, Melvin Goodie did not act pursuant to or as a consequence of the authority vested

in him by virtue of his being a peace officer. Without question, the standard of review pertinent in this action is the "clearly erroneous" standard of Rule 52(a) of the Federal Rules of Civil Procedure. Plaintiff, the petitioner before this Honorable Court, now suggests that the factual findings during the adjudicatory process in the courts below were "clearly erroneous" and should, therefore, be reevaluated.

Defendants-respondents maintain that the factual findings of the courts below, and the legal conclusions drawn therefrom, are not erroneous. Furthermore, to grant the Writ of Certiorari would be offensive to the rules of this Honorable Court, particularly Rule 10 which sets forth the criteria normally considered by the Court in its review of writ applications.

As a consequence of all of the above, the decisions of the lower courts are correct, and complainant's Petition for Writ of Certiorari should be dismissed.

REASONS FOR DENYING THE WRIT

THE COURTS BELOW DID NOT ERR IN FINDING THAT THE ACTIONS OF MELVIN GOODIE ON SEPTEMBER 17, 1987, WERE NOT "UNDER COLOR OF LAW" IN ORDER TO SANCTION AN ACTION UNDER 42 U.S.C. §1983.

The sole inquiry before this Honorable Court is whether Melvin Goodie acted "under color of state law" on Septmber 17, 1987. As previously noted, the lower courts found that Goodie's actions on that date were those of a

private citizen and bore no relation to his status as a peace officer. The decisions of those courts are based upon findings of fact, which must be sustained, particularly in view of Rule 52(a) of the Federal Rules of Civil Procedure and Rule 10 of the rules of this Honorable Court.

In its reasons for judgment, the trial court found that:

> "This Court concludes that the altercation between Pritchard and Goodie was simply an unfortunate one between two private citizens. Plaintiffs have failed to prove that the actions were 'under color of state law'. Therefore, plaintiffs cannot prevail under 42 USC 1983."

See p. 25, Appendix 3 of the Petition for Writ of Certiorari. Moreover, the trial court concluded that:

> "With specific reference to the Breaux Bridge police department, Officer Devillier, the officer in charge, and Officer Clark, the dispatcher, handled the matter very professionally. Although Goodie was angry and yelling at the police station, as was Pritchard, Officer Devillier separated the men and diffused the situation.
>
> According to the deposition of Gerald LeBlanc, a neighbor of the Pritchards who accompanied Mrs. Pritchard to the police station, 'He (Devillier) was trying to do the job properly and trying to find out what happended and tried to keep peace at the same time.
>
> Officer Devillier, who is no longer with the

> Breaux Bridge police department, testified that he made the decision to book Mr. Pritchard on the charges after discussing it with Mr. Goodie and *drawing his own conclusion.* He further testified that he performed all of the police functions...
>
> Because of the allegations in this suit, the court feels that it is necessary to make some comment upon the credibility of some of the witnesses who testified at trial. Howard Devillier's testimony was very believable. The same cannot be said for Mr. Pritchard."

See p. 26, Appendix 3 to plaintiff's Petition for Writ of Certiorari.

42 U.S.C. §1983 provides that:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

This Court has succinctly, yet accurately, defined the

elements which a plaintiff, by a preponderance of the evidence, must establish in order to prevail in a Section 1983 action:

> "First, the plaintiff must prove that the defendant has deprived him of a right secured by the 'Constitution and laws' of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right 'under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.' This second element requires that the plaintiff show that the defendant acted 'under color of law.' " (citations omitted)

Adickes v. S. H. Kress & Co., 398 U.S. 144, 150, 90 S.Ct. 1598, 1604, 26 L.Ed.2d 142 (1970).

The acts of police officers in the ambit of their personal, private pursuits do not fall within the purview of 42 U.S.C. §§1983, et seq. *Stengel v. Belcher,* 522 F.2d 438 (6th Cir. 1975); *Delcambre v. Delcambre,* 635 F.2d 407 (5th Cir. 1981). Nonetheless, police officers are held to be acting under color of law when they undertake to perform *official* duties, whether they are on duty or off duty. *Screws v. United States,* 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. 1495 (1945). To determine whether an officer is acting under "color of law" one must necessarily focus upon the *nature of the act performed* and the reasons therefor. Hence, it is necessary to scrutinize the actions of Melvin Goodie to determine if his conduct on the evening of September 17, 1987, was *personal* or in furtherance of his official duties as an officer of the Breaux Bridge Police Department.

There is no dispute regarding the fact that on the night in question, Melvin Goodie was off duty. See page 10 of plaintiff's writ application. On the other hand, complainant has premised his argument that Goodie nevertheless acted "under color of law" based exclusively upon Goodie's own self-serving testimony.[3] In essence, Goodie's testimony, upon which the plaintiff desperately clings in this action, was to the effect that:

A. He pursued the plaintiff from the City of Breaux Bridge to the Ruth Canal Bridge because of the complainant's erratic driving behavior. Exhibit P-9, p. 36.

B. He displayed his officer's badge while in pursuit of the Pritchard vehicle by holding his arm out of the truck window with the badge in his hand. Exhibit P-9, pp. 38, 42, 43, 44; Exhibit P-8, p. 25.

C. While in pursuit of the Pritchard vehicle, Goodie blinked his headlights and blew his vehicle's horn, all in an attempt to stop the complainant's automobile. Exhibit P-8, p. 27; Exhibit P-9, p. 39.

D. Upon first approaching the Pritchard vehicle at the Ruth Bridge, Goodie identified himself as a police officer and displayed his badge of authority. Exhibit P-8, p. 27.

E. Pritchard attempted to reach for a revolver

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[3] Goodie's testimony was adduced at trial through the mechanisms of a pre-trial deposition (Exhibit P-8) and a transcript of his testimony at a criminal trial on charges which arose out of the incident before this Court (Exhibit P-9).

located on the seat of his vehicle which prompted Goodie to strike him in an act of self-defense. Thereafter, the complainant exited his vehicle and attempted to strike Goodie, at which time he again acted to defend himself by hitting Pritchard. Exhibit P-8, pp. 27-28; Exhibit P-9, pp. 42-43, 47.

F. After the physical altercation described above, Goodie advised the plaintiff that he was under arrest and instructed him to follow him (Goodie) in his vehicle to the Breaux Bridge Police Station. Exhibit P-8, p. 28; Exhibit P-9, p. 44.

Notwithstanding the foregoing, the plaintiff now requests that this honorable Court accept the testimony of Melvin Goodie (which obviously the courts below did not do) and at the same time *reject his own admissions* at trial which proved that:

A. While following plaintiff from the City of Breaux Bridge to the Ruth Canal Bridge, Goodie did nothing to indicate that he was an officer of the law. In fact, Pritchard testified that Goodie attempted to cause an automobile accident by passing him at one point and then suddenly hitting his brakes, thus causing the plaintiff to take evasive action. Tr. 199, Vol. 6; Tr. 71, 200-202, 202-204, Vol. 7.

B. Goodie struck the complainant without any warning whatsoever, and in doing so simply uttered the words, "This is for you, you white honky". Tr. 55-56, Vol. 7.

C. The plaintiff stopped his vehicle at the Ruth Canal Bridge only to wait for traffice to clear the one lane structure, as opposed to any action or command from Goodie. Tr. 206-208, Vol. 6.

D. Pritchard followed Goodie after the physical altercation simply to obtain his license number so that he could report the alleged attack to the appropriate police authorities. Tr. 72, 209-210, Vol. 7.

E. Goodie and Pritchard arrived at the Breaux Bridge Police Station simultaneously and coincidentally. The complainant's intent was to report the alleged criminal acts of Goodie, Tr. 210-211, Vol. 6; Tr. 73, Vol. 7.

F. After Pritchard was at the police station for approximately 5 minutes, he learned, from Officer Devillier, for the first time, that Goodie was an off duty police officer. Tr. 212-213, Vol. 6; Tr. 73, Vol. 7.

G. Prior to being advised that Goodie was an officer of the law, Pritchard had no inkling whatsoever that Goodie was a policeman and, in fact, never surrendered himself in any respect as a consequence of an official order or command from Goodie. Simply speaking, Goodie never performed or adopted any action whatsoever that would indicate to anyone that he was an officer of the law or that any of his actions taken on the night of September 17, 1987, were pursuant to any authority imposed upon him as a consequence of his being a commissioned police officer. Tr. 73-77,

Vol. 7.

H. Goodie was dressed in plain clothes, was off duty and was driving a vehicle which was not an official vehicle, nor had any such identifying marks. Tr. 72-77, Vol. 7.

I. At no time did Melvin Goodie identify himself to plaintiff, or anyone else for that matter, as an officer of the law. Tr. 209, Vol. 6.

Additionally, Officers Howard Devillier and Dave Clark testified that after the arrival of the plaintiff and Goodie at the Breaux Bridge Police Station, the latter performed absolutely no function of a police officer, nor displayed any authority of an officer of the law. Tr. 105-106, 108-109, 113, Vol. 6; Tr. 72-77, Vol. 7. Furthermore, the investigation of the incident, formal arrest and booking of the plaintiff, in addition to the reports prepared, were the result of the efforts of Officer Howard Devillier, exclusively. Goodie played no role whatsoever in any of the foregoing except to relate to Devillier his version of the incident, just as Pritchard did, and which any other ordinary citizen would have been expected to do. Tr. 43, 47, 51, 104-106, 118, Vol. 6.

In the face of the foregoing, the trial court chose to accept the factual version *as related by Pritchard* on this threshold issue of "color of law", all as directly and inferentially substantiated by Officers Devillier and Clark. R. 331-332, Vol. 3; Appendix 3 to plaintiff's Petition for Writ of Certiorari, pp. 22-27. It is defendants' position that the findings of fact by the lower courts in the above regard are correct and, under the jurisprudence of this country, must

be accorded great deference and left undisturbed absent clear error. 28 U.S.C., Rule 52(a), Fed.R.Civ.P.; U.S. Sup. Ct. Rule 10, 28 U.S.C.; *NCH Corporation v. Broyles,* 749 F.2d 247 (5th Cir. 1985).

On page 14 of his writ application, plaintiff isolates various "activities" of Melvin Goodie which he contends substantiate that Goodie acted under "color of law" on the evening of September 17, 1987. As previously noted, the bulk of these "activities" is based upon the uncorroborated and self-serving testimony of Goodie. Additionally, these factors ignore Pritchard's own testimony, as well as that of the other witnesses who testified at trial.

As an illustration of the illegitimacy of the plaintiff's position in this respect, while the booking sheet designates the arresting officer as Melvin Goodie, that information, as verified by Officer Devillier, was based solely and exclusively upon what Goodie told Devillier. Likewise, the document itself was completed by the only officer in charge on the night in question, Howard Devillier. In fact, Officer Devillier prepared all of the arrest documents based upon information given to him by Goodie, and all traditional police duties associated with the arrests of the plaintiff were performed, solely and exclusively, by Devillier.

Officer Devillier testified that he treated Goodie no differnently than he would have any private complainant involved in such an incident. Tr. 106, Vol. 6. The only evidence to the effect that Goodie attempted to identify himself as a police officer and "arrested" Pritchard is the testimony of Goodie. Every other witness contradicts and refutes this contention. In fact, Pritchard himself admits

that after Goodie struck him at the Ruth Canal Bridge, he drove away. Pritchard's pursuit of Goodie at this juncture was an attempt to obtain the license tag number of Goodie's vehicle so that he could report the incident *to the police.* Tr. 72, 209-210, Vol. 7.

In spite of the above, plaintiff now invites this Honorable Court to discount his own testimony, and that of the other witnesses in this case, and accept only that of Goodie, an invitation which the lower courts declined. It is, exclusively, Goodie's self-serving testimony at a pre-trial deposition (Exhibit P-8) and a criminal trial (Exhibit P-9) which remotely intimates that he acted under "color of law"; but, interestingly, if one accepts Goodie's version of the events (so as to find action "under color of law"), then the Court must also accept Goodie's testimony which indicates that his actions (the force employed by him against Pritchard) were warranted and not excessive under the circumstances. That is, the striking of Russell Pritchard, if one accepts Goodie's testimony only, at the Ruth Canal Bridge was an act of self-defense to repel the aggressive action of the plaintiff. To say that the complainant finds himself in a "Catch 22" situation on this point is an understatement.

Hence, defendants submit that Pritchard cannot carry the burden of persuasion imposed upon him by law. *Thibodeaux v. Bordelon,* 740 F.2d 329 (5th Cir. 1984); *Baltezore v. Concordia Parish Sheriff's Department,* 767 F.2d 202 (5th Cir. 1985), cert. den. 474 U.S. 1065, 106 S.Ct. 817 (1985). It is difficult to perceive how the complainant can, in good faith, seek recovery for the *alleged* misconduct of Goodie on the one hand while, on the other hand, request that this Court reject his own sworn, unrefuted testimony

about the events upon which his claims are fundamentally based.

Accordingly, the evidence of record clearly and unequivocally supports the findings of fact by the courts below to the effect that Melvin Goodie did not act under color of law on September 17, 1987. Rather, his actions were adopted to avenge the insulting, racist remarks directed to him by the plaintiff; purely and simply, the nature of his actions was personal. Likewise, *by virtue of his own testimony,* the plaintiff has failed to isolate any factors which demonstrate that Goodie acted as a police officer, thus igniting the protective guise of 42 U.S.C. §§1983, et seq. The decisions of the courts below, therefore, are correct and should remain undisturbed.

CONCLUSION

The conduct of Melvin Goodie on the night in question falls within the ambit of his personal, private pursuits, as the lower courts correctly held. He did not undertake to perform an official act or duty. *Delcambre v. Delcambre,* supra; *Screws v. United States,* supra. Accordingly, no liability can be assigned to the defendants pursuant to the federal claims urged by the plaintiff in this litigation.

The basis of the writ application of the plaintiff addresses factual findings by the lower courts. The record of these proceedings reflects that the factual findings of the trial court and court of appeal are not clearly erroneous. Moreover, the factors normally relied upon by this Honorable Court in its deliberations on whether to grant a petition for a writ of certiorari are not implicated by the

plaintiff's arguments urged in the writ application. See U.S. Sup. Ct. Rule 10, 28 U.S.C.

In consideration of all of the foregoing, defendants submit that the judgments of the courts below are correct in all respects. Thus this Honorable Court should deny the Petition for Writ of Certiorari.

Respectfully submitted:

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